



Interoffice Memorandum

To: Bill Monahan, City Manager

From: Brett Kelter, Associate Planner

Date: February 10, 2011

Re: Study Session on Natural Resource Overlay Project

On February 22, 2011, Planning staff will meet with City Council to prepare for the public hearing on the Natural Resource Overlay project. The outcome of the project is a proposal to amend the text and maps of the Zoning Code and Comprehensive Plan; the hearing is scheduled for April 2011.

The Natural Resources Overlay project is Milwaukie's response to Metro's Title 13 "Nature in Neighborhoods" program (adopted in 2005), which designates and protects Habitat Conservation Areas (HCAs) near streams and wetlands and requires local jurisdictions to protect these areas from development. Metro provided all local jurisdictions with a regional inventory map of HCAs and a model code for regulating these areas, but each municipality has taken a different approach to complying with Title 13. Some jurisdictions have simply adopted the Metro model code and maps. Others have asserted that their existing resource protections make them substantially compliant. A few have adopted new HCA rules as a distinct section of their zoning code, while others have incorporated them directly into their existing resource protections.

In Milwaukie, the regionally designated HCAs are all located close to the same creeks, streams, and wetland areas already designated by the City as Water Quality Resource (WQR) areas and protected through Section 19.322 of the City's zoning code. After assessing the options, Milwaukie decided that it would be most effective to incorporate the principles of the HCA model code into the City's existing WQR regulations, and to show HCAs on the same map as the existing WQR areas.

The City's existing WQR regulations are fairly restrictive, making it difficult to disturb areas within 50 feet of a stream or wetland without first demonstrating to the Planning Commission that the impacts are unavoidable and will be minimized and/or mitigated. The basic idea is to encourage property owners to conduct any development-type activities at least 50 feet away from the resource itself. The review process is highly subjective and allows for evaluation on a site-by-site basis. In contrast, though the proposed HCA rules discourage development activities within designated resource areas, they also provide a "clear and objective" review option for determining how much disturbance can be allowed. If an applicant takes advantage of this clear and objective option, the review process is more objective and therefore can be completed without a public hearing.

Here are two examples of how these options would work:

1. A builder wants to build on a flag lot that contains a small creek that crosses the area where the driveway needs to be. The presence of the creek does not make the lot unbuildable, it just means the builder needs to protect the creek during all phases of development. The Planning

Commission would review the application to ensure that any impacts to the creek and to its 50-foot buffer area are avoided if possible, minimized if not, and fully mitigated as appropriate. This review is subjective and would likely result in requirements for the project to include replanting as well as to provide proof that a bridge will not damage the resource.

2. A builder wants to build a new house on a 7,000-square-foot lot that is 70% covered by HCA. Based on the clear and objective review standards, the City would allow disturbance of up to 350 square feet of the HCA during construction of the house and would require a set amount of re-vegetation and tree planting. If this is sufficient for the project, the builder would submit an administrative permit application that allows staff to verify the location and size of the HCA, in addition to the regular development standards of the underlying zone. This review is objective but still allows staff to add conditions as necessary to ensure that trees and other resources on the site are protected during construction. If the proposed house project cannot meet the clear and objective review standards, the builder would have the option to go through a more subjective review similar to the one described above in Example 1.

During the study session, staff will present the Council with several scenarios to demonstrate how the proposed code amendments will affect certain common activities. The proposed amendments will make it less cumbersome to gain approval for some activities; they will also impose some new limitations. Overall, staff believes that the proposed code will meet the regional and state requirements for resource protection while providing a clear and fair process for property owners.

Approximately 475 properties in Milwaukie contain either WQR areas or HCAs. Many other people and organizations volunteer many hours each year to enhance and restore the city's streams and wetlands. To ensure that the new regulations were vetted by a broad spectrum of interests in the community, staff invited affected property owners and natural resource advocates to participate in the Natural Resource Advisory Group to review drafts and discuss key issues. The Advisory Group met multiple times throughout 2009 and 2010 and has provided very useful feedback for refining the code and maps that will be proposed for adoption within the next couple of months.

One of the issues raised by the Advisory Group is the desire to see no or very low fees for simple, everyday activities that require a low level of administrative review and are squarely in the best interest of protecting the resource. For example, the first step for most every project proposed near a resource area will be to work with City staff to verify the boundary of the resource. This needs to be processed as a Type I administrative review, for which the City typically charges \$150. The same review process will be used for plans that outline restoration and enhancement activities, which the City certainly wants to facilitate. The Advisory Group recommended waiving the standard fees for these kinds of activities, which may prove to be very common and should not take very long to review. The group suggested that a reduction of bureaucratic process and cost might encourage the kind of pro-active compliance that will result in better resource protection over time. Planning staff agrees, but has pointed out that this approach may conflict with the recently adopted Milwaukie Financial Policies.

Other members of the Advisory Group and some attendees of an Open House event held in January 2011 have complained that the proposed regulations are overly restrictive and pose an excessive burden to property owners. Interestingly, this complaint has been focused on discussions about landscape maintenance and creation of pathways and small decks. There has not been as much of a concern expressed about imposing high standards on construction of new buildings, which staff takes as an indication that the proposed regulations for new development activity are reasonable and acceptable.